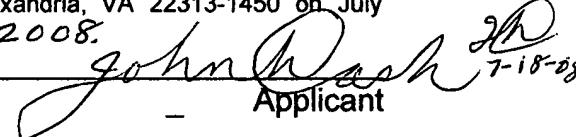




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John Dash
7-18-08
Applicant

Applicant: John Dash
Application No. : 10/616,165
Filing Date: 07/07/2003
For: Low Temperature Nuclear Fusion
Art Unit: 3663
Examiner: Richardo J. Palabrica
(aka Rick Palabrica)

Request for Reclusal By Examiner Palabrica,

His Supervisor And All Others In Group 3663 Or Elsewhere In The Patent Office
Who Have Been Contacted In Any Way Relative To The Subject Matter Of Or To
Any Aspects Of The Prosecution Of Above Captioned Application

Commissioner of Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

:

The Action Sought By This Request

The examiner assigned to this application, Mr. Palabrica, his supervisor and all others in Group 3600 or elsewhere in the Office who have been contacted in any way relative to the the subject matter of or any aspects of the prosecution of the this application including, without limitation, the subject matter of cold fusion, are requested to recluse themselves from any further activity relative to any consideration of anything related to the subject matter of this apliction or

relative to or this application. or relative to any consideration of any thing related to the subject matter -any aspect of cold fusion - or the handling of this application by the Office until current Ofice policies and procedures relative to this topic are obviously changed.

This request is being made since it is believed that currently no patent application pertaining to any aspect of cold fusion can be or will be reasonably and fairly examinerd the the Office. Thie noted belief is considered to be in part confirmed by the fact that the PTO has not made public all material information relative to how it has and continues to apply the "secret law" evidenced by the SAWS materials of record in this case.

This request is being made since the file history of this application reveals that this application has not been fairly and impartially examined as required by 35 USC 131. That the Applicant cannot expect this situation to change is shown by the most recent Office action mailed 03/12/2008 in which an election of species was required between two different "products" disclosed in the specification as being concurrently produced and because of the unsupported, erroneous allegation that they are "patentably distinctive species".

Since the specification in this case indicates that these "products" are concurrently produc ed in the same reaction how can they possibly be distinct species as claimed by the examiner? In anticipation of some questionable action by the PTO in connection with this case in response to the required election the following election was made in response to the 3/12/08 Office action"

".....So as to avoid an improper claim of abandonment an election of whatever the Offices considered to be the species of claim 13 is elected and is traversed for the reasons indicated herein. So as to avoid any further questions of whether or not this document is responsive it is noted that considered claims 14 to 20, inclusive are dependent under claim 13 and, hence, if claim 13 is held to in fact relate to a species they also relate to this same species. Claim 21 in substance merely adds to claim 13. Under the circumstances how can it relate to a different species, particularly when the

specification makes it clear that during the operation of he process both heat and radioactivity are concurrently produced as the process is carried out?"

If this doesn't constitute an election as required what does? And why is it that the Notice of Abandonment sent out on 6/18/2008 merely indicate that "No reply has been received" by the PTO to the election clearly mentioned in the preceding quotation from an Office action..

The accuracy of the preceding statements relative to the examination history of this case is overly apparent from the prosecution history of the subject matter in this case. It is not considered necessary to encumber the file in this case with a detailed discussion of the complete prosecution history of the subject matter of this application prior to the filing of the present application. This is especially the case since the file history shows that this application has not been fairly examined as required by 35 USC 131.

The Prosecution Of This Application Prior To
The Office Action Mailed 03/12/2008

The prosecution of this application started off with a first or initial requirement for the election of a disclosed species. This was followed by a 55 page diatribe mailed 04/27/2006 which "threw the book" at virtually every aspect of this application apparently on what appears to be only one "basic" ground - on the ground that it pertains to the topic of "cold fusion".

This Office action did this without even doing such things as acknowledging that "cold fusion" is a generic term covering two different types of procedures - (1) the normally discredited "basic" or alkaline cold fusion as proposed by Fleischmzn and Pons (hereinafter referred to as "F&P") and (2) "acidic" cold fusion as proposed by the undersigned Applicant . Acidic and basic reactions are known to every elementary chemistry student as being as different as "night and day". This is critical to the subject matter claimed since it pertains to the acidic form of cold fusion, not the controversial basic form of it proposed by F&P.

Thereafter the prosecution history is a bit difficult to precisely follow without reference to the "official" file of this case in the Office. The documents furnished to the undersigned create a minor element of doubt as to precisely what happened next in the PTO. Clearly the Applicant filed 2 separate, but related, responses. The first charged that this applicant had not been properly examined and the second added to this charge that this conclusion was evidenced by SAWS documents indicating that "secret law" had been applied against this application.

During this period a document signed by Examiner Palabrica which was not identified by a paper number was apparently mailed on 11/16/08 by the Office. In this Office action Examiner Palabrica said "*The Examiner has determined that that the applicant's 10/2/06 amendment violates the provisions of 37 CFR 1.3 and the examiner...has acted .. in accordance with the provisions of MPEP 714.19 (K)*". No clue as to any specific alleged violation was set forth in this last or any prior document.

A subsequent somewhat related document signed by the Director of Group 3600 and mailed March 1, 2007 held approximately as follows: (1) that the preceding action by the Applicant was non compliant with 37 CFR 1.3; (2) and that it would not be entered because of this; (3) and, apparently, on the additional ground that complaints about examiners "must be made in separate correspondence"; and (4) by apparently indicating that it would not be entered because business before the PTO was required to be conducted with "decorum and courtesy".

It is significant that the first of these two related 11/16/06 and March 1, 2007 documents did not state the reason or reasons why the preceding document signed by the Applicant was alleged not to be in compliance with 35 USC 1.3. The prior comments by the Applicant contained no more of a complaint against the Examiner's action than any common strong argument in response to an Office action alleging that a examiner was wrong for any of a series of reasons. Even if these comments had specifically complained about an examiner (which they did not) such a complaint is not known to be against any Office rule. The Applicant did not use any profane or similar or related language

in connection with anything filed in the Office. The Office rules do not apparently provide any sort of a form appeal from an examiner's unilateral action in a situation such as the present

Neither of the 11/16/06 and March 1, 2007 documents indicated what the PTO regards as "decorum" or "courtesy". This is significant. It is probably impossible to tell someone that he or she is seriously wrong without the words used having a detrimental meaning or connotation. What are the limits of what can be stated in responding to the Office? What constitutes a breach of "decorum" or "courtesy". No decisions are known on this matter. The MPEP does not provide answers to this question,

A request for a reconsideration of the decision "decision" by Mr. Hajac, the Group director of Group 3600 mailed March 1, 2007 referred to in the preceding, to clarify such matters was incorporated in the preceding document mailed to the Office. It is not clear if the Office acknowledged receipt of this request since a not clearly dated document which may have been mailed 04/09/2007 received by the Applicant refers to an "amendment document filed on 29 March 2007". No request for reconsideration of a decision by the Group Director was filed on or about the noted date but one was included in the document mailed to the Office March 1, 2007. This last request for reconsideration pointed out that in the absence of some guidelines by the PTO as to what it considered to be "decorum and courtesy" in many cases an applicant could not respond to an Office action in an effective manner without running the risk of the Office arbitrarily holding an application abandoned.

There is no point in encumbering the present document with a discussion as to all except one of documents apparently following the items referenced in the immediately preceding discussion. These items which are not discussed concern essentially minor errors and efforts to correct them. These were followed by substantive matters. One of these relates to the Office's application of "secret law" as indicated by so called "SAWS" documents.

The Office has not yet responded to the document mailed to the Applicant on 11/16/07 relative the Applicant's belief as to improper conduct by the Office being confirmed by the receipt of "SAWS" documents from some

presently unknown whistle blower. These very strongly indicate, but do not precisely state, that the Office has improperly applied a "secret law" to all applications pertaining to any type of cold fusion and other subject matters. This has had the effect of denying this Applicant and others the same type of fair examination granted to applications which are not on the SAWS list of cases.

The SAWS documents rather clearly direct that applications for any species of cold fusion are to be accorded "special" treatment and are not to be handled as the usual applications. It is obvious from the SAWS documents that this application and certain other applications must not have received a fair consideration by the Office. These SAWS documents raise the question if patent applications have been or are being examined in accordance with the social or political acceptability of their subject matters?

As a result of the confirmation of the Office's odious conduct discussed in the preceding this Applicant filed several documents in this case. The first was a document entitled "Amendment and Request for Reconsideration in response to Paper 20070227 Mailed March 1. 2007". It responded to the then pending matters. It was followed by a request for a reconsideration of the previous "decision" by Mr. Hajac, the Group director referred to in the preceding, the director of Group 3600. At the time it was again pointed out that in the absence of some guidelines by the PTO as to what it considered to be "decorum and courtesy" in many cases an applicant could not respond to an Office action in an effective manner without running the risk of the Office arbitrarily holding an application abandoned.

This was followed by the filing of a supplemental amendment primarily designed to correct minor errors, which emphasized the fact that there are different species of cold fusion, and intended to call attention relative to the current research in the cold fusion field. This research evidences the operative character of acidic cold fusion. This latter was done in view of hearsay to the effect that Office had current policies discouraging or impeding examiners from keeping up with the advancements in the fields in which they worked.

The Office then mailed on 04/09/2007 a paper calling attention to a minor error in this supplemental amendment. A second such amendment was

then filled to correct this transgression. Another minor error was found by the examiner in this last response and noted in a paper mailed 07/26/2007. A response was then filed taking care of this last transgression and noting the favorable reception accorded the Applicant at a cold fusion conference in Russia.

The Second Election Of Species Requirement

The Office then mailed on 10/15/2007 a most "unique" Office action. No significant substantive changes had been made in the claims in any response which had been previously filed prior to this date. In this last Office action the Office suddenly reversed its position and in spite by improperly alleging that unspecified changes made by the amendment "necessitated" an election of species requirement. Since no significant changes had been made in the claims this conclusion is in error.

How can this possibly be so? Shouldn't an examiner be accountable for his misstatements? This is particularly the case with respect to this second required election of species. It was made as follows:

"This application contains claims directed to the following patentably distinct species.

- A. Wherein the electrolyte is heated only (e.g.) see claim 13.*
- B. Wherein the electrolyte is both heated and caused to become radioactive (e.g.) claim 21"*

The portion of the specification relative to these A and B allegations reads as follows (p.1, l.20-24) where it is stated:

"The invention is based upon the observation that significant amounts of energy in the form of heat and the production of a radioactive material,,,is obtained....".

This and all other parts of the specification in the case say nothing about the electrolyte itself becoming radioactive as indicated by the examiner. It is more important to note that this indicates that both heat and radioactive material are concurrently produced. In short how can two concurrently produced items constitute :"patentably distinct "subject matters?

The insupportable nature of this conclusion by the examiner is further

indicated by an apparent effort to change the fact that the word "comprising" used to separate the preamble of claim 13 from the remainder of this claim is uniformly held to permit the coverage of the claim to extend to not only what is precisely defined in it but to enable the language of the claim to cover not only what is defined in it but also not incompatible additional subject matter . Thus, the word "comprising" as used in claim 13 permits the claim to cover not only what is directly stated in it but also other items which are employed in connection with whatever is directly stated in a claim.

This is also in accordance with common sense. In a process as claimed inherently everything in the reaction vessel in contact with the reactants is bound to be heated when ever heat is liberated in the reaction vessel. This indicates that the required election "A" is not well founded. The required "B" election is similarly defective. Claim 21 is worded differently from claim 13 but still "reads on" or covers the simultaneous production of heat and radioactivity The specific, significant matters involved in the required election they are essentially rewording of one another even though they differ in scope.

The Office Rules Effectively Limit an Applicant's Arguments.

At a date which is presently unknown to Applicant in October, 2007 the applicant filed with the Office a document covering two clearly labeled separate items: (1) a request for a suspension of action in this application until the Office acted on the request for reconsideration of a decision by the director of Group 3500 and (2) a substantively related response to the preceding second election of species situation discussed in the preceding. The response was as complete as seemed reasonable under the circumstances regarding the nature of the election .

Any such response inherently had to be somewhat limited because of a lack of any guidelines as to what an applicant can say in responding to an Office action which he considers to be grossly improper. In effect the Office rules and procedure shield it from having anything in the record of an application which personnel of the Office want to avoid in the record of an application by abusing the intent of 35 USC 1.3 so as to refuse to allow an applicant, such as myself, the

opportunity to effectively argue against any action by the Office. while concurrently refusing fair treatment to an application in accordance with the "secret law" that it practices.

The Examiner Has Deliberately Ignored The Action Taken By the Applicant

In the Office action mailed 03/12/2008 the Office has taken actions which are deemed to be highly improper. One such action involved treating the two item response filed 1105/07 "...under 37 CFR 103(a)" when there is no reason for such treatment and when it is not apparent what was attempted by such treatment.

The first item in this response was clearly labeled as "Item 1". It requested a suspension of the period of reply to an office action. The second was clearly labeled as "Item 2". It was clearly labeled as "An Imperfect "limited" Response To Office Communication Mailed Oct. 14,2007." This method of designating the response was a consequence of the Applicant desiring to avoid another round of 35 CFR 1.3 problems which might cause this application of be held to be abandoned by the Office. In all normal respects other than the fact that the Applicant believed that the response could not be satisfactorily worded for this reason this second response was a normal response.

In taking this action the Examiner apparently ignored the fact that the preceding paper filed by the Applicant contained the item 2 noted in the preceding which did respond fully to the last requirement for an election. Thus, when this request to suspend action in this case was considered by the Office this application did not contain an outstanding Office action. However, even if it had this is no reason for denying the request since there is nothing in the Office rules mandating the application of an unsupported statement only found in the MPEP. The later has been held wrong on occasion.

This Application Is Not Being Examined Fairly

The preceding refusal to act on the pending request for a suspension of the prosecution until after the Office acted on a request for clarification of its position on a legal point is considered to be another action designed to keep

refusing the allowance of this application until the Applicant gives up his efforts to obtain protection on the subject matter of this application. Things such as the content of the Notice of Abandonment dated 3/16/2008 referring to two separate items as a "letter" when these items have extensive titles in the document and when these items were referenced in an untitled document mailed by the Office on 03/12/2008 have only the status of an annoying pawn in the prosecution of this application

It is significant that the latter communication states "*The time periods for reply, if any, is set in the attached communication.*" No such date is given in the text of this document. And yet about three months later in the 06/18/2008 communication it is indicated that "The time period for reply, if any, is set in the attached communication.". This last held the application abandoned because of the false allegation that no reply to a requirement relative to what is considered to be an improper election of species had been made when in fact the receipt of the document containing this response was acknowledged in the 03/12/2008 Office communication. The Office had not liked the manner in which the required election was made at a minimum the Examiner should have given the Applicant an opportunity to restate it.

It is considered that the reasons as to why the Office continues to do items such as mentioned in the preceding discussion and continues to unfairly consider the subject matter claimed are not known. It is presumed that these reasons relate to the fact that this application relates to an acidic species of cold fusion and that since the SAWs directives relate to all species of cold fusion including the often rejected form of basic cold fusion - that this application is unpatentable. This nonsense, especially in view of the well known promising current status of acidic cold fusion. The Office is urged to disclose the actual or real reasons for its conduct and to stop its current continuing efforts to avoid a fair consideration of the merits of this application.

Respectfully submitted,

July 18, 2008



**John Dash, Applicant, on behalf of himself and
the Assignee of the noted application,**